IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ZINA PARELLI	:	
	:	
v.	:	
	:	
BELL ATLANTIC-PENNSYLVANIA,	:	
et al.	:	CIVIL NO. 98-3392

MEMORANDUM

Giles, C.J. June ___, 2000

Zina Parelli ("Parelli") claims that she was wrongfully denied short-term disability benefits under her employer's Sickness & Accident Disability Benefit Plan ("SADBP" or the "Plan") by the Plan's administrator, the Bell Atlantic Corporate Employee Benefits Committee ("Corporate EBC"), in violation of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1001, et seq. Before the court is the Corporate EBC's Motion for Summary Judgment. For the reasons that follow, the motion is GRANTED.

BACKGROUND

Material Facts

The SADBP Plan

Bell Atlantic's ("Bell") short-term disability plan, SADBP, is designed to help replace the lost wages of eligible employees who are unable to work for Bell due to sickness, non-job-related accident injury, or occupational illness, as defined by the Plan. (SADBP Summ. at 3). SADBP pays disability benefits for up to 52 weeks; if the disability last longer than 52

weeks, the employee may be eligible for long-term disability benefits. (Id.).

SADBP vests in the Plan Administrator the exclusive authority to: (a) determine employees' eligibility for benefits under the terms of the Plan; (b) decide appeals; (c) interpret and amend the Plan; and (d) administer the Plan. (SADBP at § 3.1). The Bell Atlantic Corporation is designated in the Plan as the "Plan Administrator," however, all of the duties and responsibilities of the plan administrator have been properly delegated to the Corporate EBC pursuant to 29 U.S.C. § 1140. (Id.).

The Corporate EBC, in turn, has delegated the responsibility of determining claims to the Bell Atlantic Benefits Claims Committee ("Claims Committee"), and the responsibility for deciding appeals to the Bell Atlantic Benefit Appeals Committee ("Appeals Committee"). (Id. at §§ 2.4 & 3.1). With regards to the administration of SADBP, the Corporate EBC uses the Health & Safety Management Center ("HSMC") to handle the daily operation of the Plan. (Id. at §§ 3.2(a) & (c)). The day-to-day duties of the HSMC include, inter alia, monitoring an employee-participant's continued eligibility for benefits under SADBP subsequent to the Claims Committee's initial determination of disability.

If an employee is denied short-term disability benefits, she may petition, in writing, the Claims Committee to reexamine its determination within sixty (60) days of receiving the notice of denial. If that employee receives an adverse ruling from the Claims Committee on review, she may submit a written request for an evaluation of that decision by the Appeals Committee within sixty (60) days of receiving notice of the Claims Committee's final determination. Decisions by the Appeals Committee are final and are not subject to further administrative review. (SADBP Summ. at 12).

Ms. Parelli

In November 1987, Parelli was hired by Bell as a Directory Assistance Operator. She was promoted to "Service Representative" in August 1988. In April 1994, the "Service Representative" job-title was changed to "Consultant"; however, the duties of the position remained unchanged. In August 1994, Parelli asked to be transferred to Bell's Lancaster County Residence Sales and Service Center where she worked until she was terminated in May of 1996.

Parelli is fifty-seven years old. She suffers from severe asthma, arthritis, depression, and is morbidly obese. In late 1991 to early 1992, Parelli underwent several surgeries to remove malignant tumors from her bladder. Subsequent to those surgeries, she had follow-up treatments, including chemotherapy, to try to prevent the cancer from recurring. In July 1994, Parelli had knee surgery to correct a problem that developed as the result of her weight and a fall. Parelli missed a significant number of work days due to her various injuries and illnesses.

Ms. Parelli's Disability Claim

On February 19, 1996, Ms. Parelli complained of "work-related stress" and requested a leave of absence. Parelli was granted leave and her case was forwarded to Bell's HSMC where a case worker was assigned to monitor her progress and be responsible for the payment of her benefits. In accordance with her duty under SADBP to assess Parelli's continued eligibility for benefits, Parelli's case worker informed her that she would be periodically required to provide medical documentation that her disability persisted.

Based on the initial documentation provided to the HSMC, Parelli was certified for leave through March 5, 1996. After several subsequent extensions of the certified disability

period, on April 19, 1996, Ms. Parelli was notified that, without further medical documentation supporting her claim that she remained unable to work, her leave would terminate on May 12, 1996 and she would be expected to return to work on the next day. Parelli failed to provide HSMC with any additional documentation; she also failed to report to work on May 13, 1996.[1] On May 14, 1996, because Parelli did not report to work as ordered, the HSMC suspended her SADBP benefits. She was not terminated.

Although the Plan specifically puts the onus on the employee-participant to supply medical corroboration of a claim, independently, the HSMC contacted physicians last known to have treated Parelli in an attempt to secure documentation supporting her claim when such documentation had not been supplied by Parelli. Her family physician, Dr. Alice Cohen ("Dr. Cohen"), informed the HSMC that, although she believed that Parelli's work-related anxiety had not been "resolved," her office had "no way of knowing" when Parelli would be able to return to work because she was under the treatment of a psychiatrist. (Letter from Drs. Cohen & Holt to Bell Atlantic Health Serv. of 5/13/96). Around the same time as it received Dr. Cohen's letter, the HSMC also received a report from Parelli's last-known treating psychiatrist, Dr. Brian P. Condron ("Dr. Condron"). This report was a "discharge summary" which stated, inter alia, that Parelli "found it difficult to determine whether she magnified her physical symptoms as an excuse to justifying staying home," and that because she felt that her "problems are real" and not psychosomatic, continued treatment would not be beneficial. (Evergreen Treatment Ctr. Discharge Summ. at 2). Because of Dr. Condron's report, the HSMC arranged a medical

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[1] Parelli received out-patient cancer treatment at the Community Hospital of Lancaster on May 13, 1996.

consultation between Dr. Condron and an outside specialist retained by HSMC, Dr. Bruce Smoller ("Dr. Smoller"). According to Dr. Smoller's report, Dr. Condron and he agreed that Parelli could return to work with no restrictions. (Bell Atlantic Psychiatric Med. Consult Form of 5/19/96). Based on Dr. Smoller's recommendation, the HSMC decided that: (a) Parelli could return to work immediately; (b) no medical accommodations were necessary; and (c) the suspension of Parelli's benefits should continue.

On May 23, 1996, Parelli's supervisor, Barbara Winebarger ("Winebarger"), called Parelli at home to tell her that unless she provided additional documentation of her illness or returned to work by May 29, 1996, she would be terminated. When Parelli failed to report to work on May 29, 1996, Winebarger, Parelli's union representative, and another Bell employee telephoned Parelli to ask whether further medical documentation was forthcoming. Because Parelli said that she was unable to supply additional documentation, she was terminated over the phone by Winebarger for "unauthorized absence and refusal to work."

Parelli sought, and was denied, reinstatement of her short-term disability benefits. She was also denied reconsideration on appeal because her request was received four (4) days after the sixty (60) day limitation period outlined by the Plan had expired. Consequently, Parelli was also denied benefits under Bell's Long-Term Disability Plan which requires that an applicant receive fifty-two (52) weeks of short-term benefits as a prerequisite to receiving such long-term benefits[2].

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[2] Bell's Long-term Disability Plan is administrated by MetLife, not the Corporate EBC. MetLife is not a party to this suit.

Procedural History

On July 1, 1998, Parelli filed a complaint alleging that: (a) Bell failed to accommodate her disability in violation of the Americans With Disabilities Act ("ADA"), 42 U.S.C. § 12112(8), and the Pennsylvania Human Rights Act, ("PHRA"), 43 P.S. § 953; (b) Bell's reason for firing her -- "unauthorized absence and refusal to work" -- violated the Family and Medical Leave Act ("FMLA"), 29 U.S.C. § 2612; and (c) she was terminated as a pretext for denying her disability benefits in violation of the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. § 1140.

On November 23, 1999, this court entered an Order granting summary judgment in favor of the defendants on Parelli's discrimination and ERISA claims, and dismissed her FMLA claim with prejudice. In the November 23rd Order, this court concluded that Parelli had sued the wrong party in her ERISA claim, so she was given leave to amend her Complaint to name the proper defendant. On December 30, 1999, Parelli filed an Amended Complaint in which she alleged that the Corporate EBC, as the administrators in fact of the Plan, violated ERISA by denying her continued short-term benefits under SADBP. Parelli's Amended Complaint also re-alleged claims that were ruled upon in the court's November 23, 1999 Opinion, so these counts were dismissed with prejudice by the court in an Order dated May 16, 2000[3].

[3] Parelli's request for a jury trial was also striken in the May 16, 2000 as her sole remaining claim is an ERISA claim.

DISCUSSION

Statement of Jurisdiction

This court has federal question jurisdiction over this matter pursuant to 28 U.S.C. § 1331 as the claim arises under ERISA, a law of the United States.

Standard of Review

When an ERISA-governed benefits plan vests the sole authority to determine eligibility for benefits under the plan in a plan administrator or fiduciary, a court reviewing the plan administrator's actions must apply the arbitrary and capricious standard of review[4]. Firestone Tire & Rubber Co. v. Bruch, 489 U.S. 101, 114 (1989); Dewitt v. Penn-Del Directory Corp.,106 F.3d 514, 520 (3d Cir. 1997). Further, where an administrator or fiduciary with sole discretionary authority to determine eligibility for benefits or to construe the terms of the plan properly delegates its discretionary authority to another fiduciary, the "arbitrary and capricious" standard of review also applies to the review of decisions made by the designated ERISA-fiduciary. Moore v. Hewlett-Packard, Co., CIV.99-2928, 2000 WL 361680, at *7 (E.D. Pa. Apr. 7, 2000) (Giles, J.) (holding that "arbitrary and capricious" standard appropriate because deference to fiduciary still underlies such judicial review); see also Madden v. ITT Long Term Disability Plan, 914 f.2d 1279, 1283-85 (9th Cir. 1990) (holding that where fiduciary properly delegates its discretionary authority to another fiduciary, arbitrary and capricious standard applies); Rodriguez-Abreu v. Chase Manhattan Bank, N.A., 986 F.2d 580, 584 (1st Cir. 1993) (citing to Madden for proposition that arbitrary and capricious standard applies to fiduciary

[4] The "arbitrary and capricious" standard of review is also known as the "abuse of discretion" standard.

whose authority is derived by delegation).

Analysis

In determining whether an ERISA administrator's decision was arbitrary and capricious, the court must restrict its review to the evidence before the administrator at the time the decision at issue was made. Mitchell v. Eastman Kodak Co., 113 F.3d 433, 440 (3d Cir. 1997). Further, to be valid, an administrator must make its claim determinations consistent with the provisions of the governing documents and instruments of the ERISA-governed plan. 29 U.S.C. § 1104(a)(1)(D). Thus, under the arbitrary and capricious standard of review, this court "must defer to the administrator . . . unless [its] decision is clearly not supported by the evidence in the record or the administrator has failed to comply with the procedures required by the plan," even if the court may have reached a contrary conclusion. Abnathya v. Hoffman-La Roche, Inc., 2 F.3d 40, 41 (3d Cir. 1993).

The Decision to Discontinue Parelli's Benefits Was Not Arbitrary and Capricious.

Under SADBP, an employee-participant seeking short-term disability benefits is responsible for providing the HSMC with medical evidence supporting her claim that she is unable to work due to sickness, non-job-related accident injury, or occupational illness, as defined by the Plan. (SADBP at 9-10). After the initial application for coverage, an employee-participant must "[c]omply with . . . instructions [she] receive[s] from [her HSMC] case manager." (Id. at 10). Such instructions "may include telephone consultation, completing additional forms, visiting [her] health care professional for additional reports and/or submitting to examinations by a designated physician." (Id.). If, "based on [the] complete case, [the Claims Committee] determines that [an employee is] not disabled and [is] fit to work," benefits will be

denied under the Plan. (Id. at 11).

In this case, Parelli first requested disability pay on February 19, 1996 when she asserted that she was suffering from "work-related stress." At that time, Parelli provided medical documentation sufficient to certify her leave through March 5, 1996. Subsequent submissions of medical evidence resulted in extensions of Parelli's certified disability period through May 12, 1996. On April 19, 1996, Parelli was notified that, without further medical documentation there would be no more leave extensions and she would be expected to return to work on May 13, 1996. Parelli failed to produce additional documentation in compliance with the HSMC's April 19th letter, so her benefits were suspended as of May 13, 1996. The Corporate EBC, although not obligated to, tried to obtain corroborating medical evidence by contacting Parelli's last-known treating physicians; it also hired an outside physician to consult with Parelli's last-known psychiatrist before ultimately denying her continued benefits.

Although Parelli admits to informing Bell on several occasions that she was unable to supply additional documentation in support of her claim of disability, (Parelli Dep. at 210), she insists that such point is moot because she alleges that the evidence before the Corporate EBC at the time it denied her claim was sufficient to justify the continued payment of benefits. (Pl.'s Opp'n to Def.'s Summ. J. Mot. at ¶ 30, p. 8). Before the Corporate EBC at the time it denied Parelli continued benefits were: (a) a letter dated May 9, 1996 from Parelli's family physician, Dr. Cohen; (b) a Discharge Summary from the Evergreen Treatment Center completed by Parelli's psychiatrist, Dr. Condron; and (c) a Psychiatric Medical Consultation and Recommendation form prepared by Dr. Smoller.

Dr. Cohen's letter

Dr. Cohen's May 9, 1996 letter was sent to the HSMC in response to its request for additional documentation to support Parelli's claim. Parelli asserts that because Dr. Cohen states in her letter that Parelli's "anxiety ha[d] not [been] resolved" and that Dr. Cohen had "no way of knowing" when she could return to work, there was adequate medical support on the record that she was disabled. (Pl.'s Opp'n Mot. at p. 14). Parelli alleges that the Corporate EBC ignored this letter making their decision to deny her benefits an arbitrary and capricious one. (Id.).

Dr. Cohen's letter states:

> Zina Lovett [Parelli] is a 54-year-old White female, who is currently on disability secondary to anxiety. Although the patient is seen regularly for counseling, and is evaluated routinely by a psychiatrist, her anxiety has not been resolved. She continues with her therapy. I have no way of knowing at this point as to when she will be able to return to work. Perhaps if her psychiatrist (who is managing her case) is contacted in the future, he will be better able to determine the time of her disability.

(Letter from Dr. Cohen of 5/13/96). Parelli would have the court interpret Dr. Cohen's statement that she had "no way of knowing" when Parelli could return to work as indicia that she could not return to work. However, even viewing this letter in a light most favorable to Parelli, it cannot be said that the passage upon which Parelli relies, when taken in context, so plainly establishes that she was unable to return to work that the Corporate EBC's determination otherwise was arbitrary and capricious. Indeed, although Dr. Cohen stated that she was unable to gauge when Parelli could return to work, she further stated that the reason for her inability was that she was not Parelli's primary care-giver at the time, and that Parelli was being treated by a psychiatrist. The reasonable inference is that Dr. Cohen simply did not possess sufficient information about

Parelli's condition to estimate when she could return to work. Notwithstanding Parelli's insistence that Dr. Cohen's letter "was available in plain view in [her] file but [was] ignored," (Pl.'s Opp'n Mot. at p. 14), the record shows that the HSMC contacted Dr. Condron, Parelli's treating psychiatrist, in accordance with the letter's suggestion. Therefore, it cannot be said that the HSMC arbitrarily ignored Dr. Cohen's letter in making its determination to deny Parelli's benefits.

Discharge Summary from the Evergreen Treatment Center

In the Discharge Summary dated April 30, 1996, Dr. Condron stated that:

> [Parelli] did benefit from the cognitive and behavioral therapy. She became insightful in stress group and realized that she tends to catastrophize quickly. She did find that she was sleeping better at night since she has been more open in the groups. She did admit that she found it difficult to determine whether she magnified her physical symptoms as an excuse to justify staying at home. The day prior to her discharge, she called in and stated that 'this is not the place for me, my problems are real'. I think this fits in with her narcissistic personality. She has a grandiose sense of self importance, lack of empathy, a sense of entitlement, and a sense that her problems are more special than others [sic]. I do not think that we could get past this and, therefore, do not think that continued stay would be beneficial. She will be seeing Missy Brown for outpatient counseling, and returning to Sarah Holt for her medications. She is on Prozac, 20 mg and Elavil, 25 mg that she came in on as prescribed by Alice Cohen, D.O.

(Evergreen Discharge Summ. at 1-2).

The HSMC's partial reliance on this summary by Dr. Condron cannot reasonable be said to have been arbitrary and capricious. Nowhere in Dr. Condron's assessment is it stated that Parelli was not able to return to work. Although Parelli asserts that nothing in the proffered documentation "released [her] back to work," (Pl.'s Opp'n Mot. at p. 14), she has missed the issue. Parelli was required by the Plan to provide her case manager with documentation which

supported her claim of disability, (see SADBP at 10); the Corporate EBC did not have the burden of disproving her claim. Parelli's argument misunderstands her obligation under SADBP. It is true that Dr. Condron did not explicitly "release" Parelli back to work in his prognosis; however, he did not state, explicitly or implicitly, that Parelli was unable to return to work either. Parelli had the burden of supplying a medical report that stated that she was unable to return to work; she did not. This being the case, it cannot be said that relying on Dr. Condron's failure to state that Parelli was unable to work as a partial basis for denying Parelli's benefits was an abuse of discretion.

Giving Parelli the benefit of all doubts, Dr. Condron's comments indicate that Parelli's illness may not be the proper basis for a finding of medical disability. Specifically, Dr. Condron stated that: (i) Parelli "tends to catastrophize quickly;" (ii) "she found it difficult to determine whether she magnified her physical symptoms as an excuse to justify staying at home"; and (iii) "her narcissistic personality" made Parelli believe "that her problems are more special" than those of others. (Evergreen Discharge Summ. at 1-2). Even the most generous reading of Dr. Condron's statements undercuts, not supports, Parelli's claim of disability. Therefore, a decision to deny benefits based partial on these comments cannot be deemed arbitrary and capricious.

Dr. Smoller's Recommendation

Dr. Smoller, the outside physician hired to evaluate Parelli's eligibility for benefits, opined that Parelli was not disabled, that she should return to work, and that she did not require any accommodations to do so. (Bell Atlantic PMC Form dated 5/19/96). Dr. Smoller rendered his opinion after a telephone consultation with Parelli's last-known treating psychiatrist,

Dr. Condron. Apparently, the consultation between the doctors consisted of Dr. Smoller introducing himself to Dr. Condron, explaining the reason for his call, asking Dr. Condron whether he had told Parelli not to return to work after discharging her from the Evergreen Treatment Center, and Dr. Condron saying "no."[5]

Parelli argues that, because of the brevity of the doctors' conversation, and the fact that Dr. Condron was her "former" physician, Dr. Smoller's recommendation "must be disregarded as incredible," (Pl.'s Opp'n Mot. at ¶ 30, p. 8), and the court should declare that the HSMC's reliance on such was an abuse of discretion. Parelli's argument fails for several reasons.

First, Parelli again disregards the fact that she had the burden of establishing her continued entitlement to disability benefits. The HSMC, and subsequently Dr. Smoller, contacted Dr. Condron, being her last known physician, for documentation because Parelli had stated that she was unable to provide the requisite supporting corroboration herself. That Dr. Smoller contacted Parelli's "former" physician was not his fault, but rather it was the fault of Parelli for not informing the HSMC who was her then current treating psychiatrist.

Second, the brevity of the consultation among specialists is not a per se indicator of invalidity. Had Dr. Smoller been engaged to render a second opinion, diagnose Parelli, or perform some other complex medical task, reliance on the Condron-Smoller consultation might in fact be an arbitrary and capricious act. However, that was not the situation here. Here, Dr.

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[5] This version of the alleged "consultation" is taken from Dr. Condron's Physician's Notes dated 6/3/96, (Ex. 20 to Pl.'s Opp'n Mot.), and not from Dr. Condron's October 1, 1999 affidavit which the court may not consider pursuant to Mitchell, 113 F.3d at 440.

Smoller was employed to perform the simple task of assessing whether the discontinuation of Parelli's benefits was appropriate. In so doing, Dr. Smoller contacted Parelli's last-known physician who told him that no restrictions had been placed on Parelli's ability to return to work.

Finally, to the extent that Parelli argues that, because of the length of the consultation, Dr. Condron was somehow duped into saying that Parelli could return to work, there is no factual support in the record for the assertion. Although, the discussion of Parelli's ability to return to work appears to have been short, Dr. Condron noted in his Physician's Notes on June 3, 1996 that the two physicians spoke long enough for Dr. Condron to believe that he was given "adequate information to assure [himself] that [Dr. Smoller] was representing Bell Atlantic." (Ex. 20 to Pl.'s Opp'n Mot.). Dr. Condron knew to whom he was speaking, and for what purpose; thus, there is no reasonable basis to infer that Dr. Smoller deceived Dr. Condron in any manner.

Information and Documentation Not Before the HSMC at Decision Time

Parelli has pointed the court's attention to: (a) a letter dated June 12, 1996 from a counselor/therapist, Barbara Moore ("Moore"); and (b) a November 21, 1998 Social Security Administration determination that Parelli was disabled and unable to hold gainful employment as of her last day of work at Bell, February 19, 1996. Neither of these items was before the HSMC when it initially denied Parelli's benefits and, therefore, cannot considered by the court in review of the initial HSMC decision. See Mitchell, 113 F.3d at 440 (stating that the court must restrict its review to the evidence before the administrator at the time the decision at issue was made).

The Moore letter, however, was available to the HSMC during the Claims Committee's review of its initial denial of Parelli's benefits. The record indicates that the Claims

Committee considered the Moore letter, but it concluded that the letter did not substantiate Parelli's claim for disability benefits after May 12, 1996. (Letter from Bell Atlantic to Nina Shapiro, Esq. of 1/17/97 at 1-2). While the letter does suggest that some changes might be made at Bell to help Parelli decrease her stress level, (Letter from Barbara Moore to Nina Shapiro, Esq. of 6/12/96), it does not state that Parelli could not return to work. (See generally id.). The duty of this court upon review is not to second guess the HSMC, but instead to determine whether the decision rendered was unreasonable. Given the record as it stood, it cannot be said that affirming its denial of Parelli's benefits in the face of Moore's letter was arbitrary and capricious.

The record shows that the Corporate EBC, via the Claims Committee, considered the documentation submitted by Parelli, her doctors' opinions and notes, as well as the arguments of her attorney. (Letter from Bell to Shapiro of 1/17/97). The Claims Committee concluded that, on the record before it, Parelli was not entitled to continued benefits for her claimed disability. Reviewing the documentation available to the Corporate EBC at the time it made the determination at issue, this court concludes that the decision to deny continued benefits to Parelli was not arbitrary and capricious.

The Decision to Deny Parelli's Request For an Appeal Was Not Arbitrary and Capricious.

In Parelli's notice of denial from the Claims Committee, she was informed that if she desired a review of her case by the Appeals Committee, she would have to submit her written request within sixty (60) days of the receipt of the denial. (Letter from Bell to Shapiro of 1/17/97). This procedure is also outlined in the Plan itself. (Appeals Comm.'s By-Laws & Rule of Procedure, Article VI, Section I). Parelli does not deny that her request for review was

submitted after the sixty (60) day period had expired. Instead she argues that language in a correspondence to her attorney which stated that the "Claims Committee generally makes decisions on claims within 90 days of receiving them," (Letter from Bell Atlantic to Nina Shapiro, Esq. of 8/21/96), makes the denial of her four-day late appeal as "untimely" an arbitrary and capricious decision.

Parelli's argument is confused. The sixty (60) day limitation that Parelli violated was the period of time in which she had to request an appeal of the denial of her benefits under SADBP. The ninety (90) days that Parelli is attempting to rely upon is merely an approximation by the Claims Committee of how long it normally takes to review a properly filed request. The two time frames have nothing to do with each other. There is absolutely no overlap, similarity, or congruence between those two time periods. Parelli's delinquency vis-a-vis the 60-day limitation could not have been based on a reasonable belief that she had ninety (90) days within to file her request for appeal.

Further, Parelli argues that because her request for appeal was due to personal problems, and that the Corporate EBC had relaxed the sixty (60) day limitation in other situations, the denial to accept her untimely filed petition was an abuse of discretion. This argument is unpersuasive. Although the Claims Committee, "in its exclusive discretion," may deem a late filing "timely", if it determines that said tardiness was "not due to the fault of either the claimant or . . . her representative," (Ex. 4 to Def.'s Mot. at D05774), its refusal to do so in this case was not an arbitrary and capricious act. During oral argument in the May 17, 2000 hearing before this court on the Corporate EBC's motion for summary judgment, Parelli represented that her appeal was untimely because she was moving residences during the relevant

time period and, as such, failed to communicate with her attorney. There is no reasonable interpretation of the given excuse from which one could conclude that the delay was "not due to the fault of . . . the claimant." As such, the Corporate EBC's denial to entertain Parelli's late filing, as well as its refusal to exercise its discretionary authority to declare the late filing timely, was not an abuse of discretion.

Conclusion

Based on a review of the medical evidence before the Corporate EBC at the time it determined that Parelli was not entitled to continued benefits, the court holds that the decision was not arbitrary and capricious. Further, as Parelli's appeal of the denial was untimely filed due to her own negligence, the decision to deny her an administrative review was also not arbitrary and capricious. Summary judgment is granted in favor of the Bell Atlantic Corporate Employees' Benefits Committee and against Zina Parelli.[6]

[6] To the extent Parelli asserts a claim against the Corporate EBC for denial of long-term benefits, summary judgment is granted in favor of the Corporate EBC because MetLife was the plan administrator of the long-term plan. Further, there is no basis for joining MetLife as a party to this suit. It is uncontested that Parelli did not meet the long-term plan's eligibility requirement of being disabled for 52 weeks prior to filing for relief.

An appropriate order follows.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ZINA PARELLI	:	CIVIL ACTION
	:	
v.	:	
	:	
BELL ATLANTIC-PENNSYLVANIA, et al.	:	NO. 98-3392

JUDGMENT

AND NOW, this ___ day of June, 2000, upon consideration of the Defendant's Motion for Summary Judgment, and the opposition thereto, for the reasons outlined in the attached memorandum, it is hereby ORDERED that the Defendant's motion is GRANTED. Judgment is ENTERED IN FAVOR of the Defendant, the Bell Atlantic Corporate Employees Benefits Committee and AGAINST the Plaintiff, Zina Parelli.

BY THE COURT:

_____
JAMES T. GILES C.J.

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to